paid by way of security for costs of the appeal and costs to him both here and in the Court below.

Appeal allowed.

Solicitors: *Thevin Chandran Siva & Chong, S.A. Lingam & Co.*

PANG HON CHIN v. NAHAR SINGH

[A.C.J. (Edgar Joseph Jr. J.) December 3 & 9, 1983]

[Ipoh – Perak Civil Appeal No. 44 of 1982]

Practice and Procedure – Leave to appeal – Principles governing applications for – Courts of Judicature Act 1964, s. 68(1).

When an application for leave to appeal may be made either to the High Court or to the Federal Court, it must not be made in the first instance to the Federal Court: Rule 58 of the Rules, unless perhaps where special circumstances make it impossible or impracticable to apply to the court below. Once leave is obtained, notice of appeal with the endorsement "filed pursuant to leave of High/Federal Court granted on ..." may be filed and served provided the time limited for appeal or any extended period as the Federal Court may have allowed has not yet expired.

The circumstances in which leave to appeal will be granted would include cases where the applicant is able to demonstrate a *prima facie* case of error or if the question is one of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage.

Cases referred to:

(1) *Ratnam* v. *Cumarasamy & Anor.* [1965] 1 M.L.J. 228.
(2) *Syarikat Seri Berlian* v. *Piang Hon Yon & Ors. Sdn. Bhd.* [1983] 1 M.L.J. 164.
(3) *Ex parte Gilchrist. In re Armstrong* (1886) 17 Q.B.D. 521, 528.
(4) *Buckle* v. *Holmes* [1926] 2 K.B. 125, 127.

CIVIL APPEAL.

James S. Devadason for the applicant.

G. Sivapragasam for the respondent.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: This was defendant's application by way of Notice of Motion for leave to appeal under section 68(1) of the Courts of Judicature Act, 1964, ("the Act"), dated and filed June 27, 1983, arising from my judgment dated May 28, 1983 (see page 141 above), allowing the plaintiff's appeal from the decision of the Sessions Court, Ipoh, dismissing his claim for return of a sum of $6,000 paid by way of deposit under a sale and purchase agreement for a dwelling house.

Section 68(1) (a) of the Act provides as follows:

> "No appeal shall be brought to the Federal Court in any of the following cases:
>
> (a) when the amount or value of the subject-matter at the trial is less than ten thousand dollars, except with the leave of the Federal Court or a Judge of the High Court.

When the application came up for hearing on Saturday last, that is to say December 3, 1983, I raised the question with counsel for the plaintiff as to whether his application was competent since the time limited for appealing under rule 56(c) of the Rules of the Federal Court, 1980, ("the Rules"), that is to say, one month from May 28, 1983, had long since expired. Specifically, I asked counsel whether he accepted that a dissatisfied party, such as the plaintiff in this case, must obtain the necessary leave and must then file and serve his notice of appeal pursuant thereto within the period of one month from the date when judgment was pronounced or within such extended period as the Federal Court may allow and, if so, whether he accepted that the application for leave would be incompetent since the time for appealing had expired.

To both the above queries counsel for the plaintiff replied, with commendable candour, in the affirmative. In this I think he was plainly right. He then added that there was no point in his proceeding with the application. In the circumstances, I had no option but to dismiss the application *in limine* as I was satisfied that it was clearly incompetent but, before doing so, I told counsel for the plaintiff that he was of course at liberty to apply to the Federal Court for extension of time to appeal under Rule 56(c) of the Rules and for leave though of course adequate reasons for the delay would have to be advanced on affidavit despite the fact that an applicant for extension of time need not now show special circumstances: see *Ratnam* v. *Cumarasamy & Anor.*[1] followed by the Federal Court in *Syarikat Seri Berlian Sdn. Bhd.* v. *Piang Hong Yon & Ors.*[2]

I should like to add one or two general observations regarding applications for leave under section 68(1) (a) of the Act. When an application for leave to appeal may be made either to the High Court or to the Federal Court, it must not be made in the first instance to the Federal Court: Rule 58 of the Rules, unless perhaps where special circumstances make it impossible or impracticable to apply to the Court below. Once leave is obtained, notice of appeal with the endorsement "filed pursuant to leave of High/Federal Court granted on....." may be filed and served provided the time limited for appeal or any extended period as the Federal Court may have allowed has not yet expired.

The circumstances in which leave to appeal will be granted would include cases where the applicant is able to demonstrate a *prima facie* case of error (see (1907), 123 L.T. Jo 202) or if the question is one of general principle decided for the first time (*Ex.p. Gilchrist, re Armstrong*)[3] or a question of importance upon which further argument and a decision of the Federal Court would be to the public advantage (see per Bankes, L.J. in *Buckle* v. *Holmes*[4]. I confess that had it been necessary for me to decide whether leave should be given in this case, I would have required a great deal of persuasion to have answered this question in the affirmative.

Order accordingly.

Solicitors: *Azman, Davidson & Co.; Thevin Chandran Siva & Chong.*

K.L. H. v. GOVERNMENT OF MALAYSIA

[A.C.J. (Wan Hamzah J.) January 24, 1984]

[Kuala Lumpur – Civil Appeal No. 30 of 1983]

Revenue Law – Income Tax – Non-compliance with Income Tax Act, 1967, s.83(3) – Employer bound to give written notice to Director General of employee's cessation of employment – Effect of – Income Tax Act, 1967, ss. 83(3) & 107(4).

The appellant employed one S. from whom income tax amounting to $12,101.85 was due and payable. S. ceased employment with the appellant on December 7, 1975. The respondent claimed that the appellant had failed to give a written notice to the Director General of Inland Revenue that it was about to cease to employ S., as required by section 83(3) of the Income Tax Act 1967. The respondent contended that by reason of the failure of the appellant the appellant became liable to pay the income tax of $12,101.85 due from S. The respondent brought action in the Sessions Court to recover the sum from the appellant. Summary judgment was given to the respondent. Hence this appeal by the appellant.

At the hearing of the appeal, counsel for the appellant submitted that the learned President should not have given judgment for the plaintiffs because there was evidence before him showing that notice was given before cessation.

Held, allowing the appeal: (1) section 83(3) applies to a case where an employee resigns on his own as well as to a case in which the employer decides to terminate the employment of an employee. Sub-section (3) of section 83 should be read together with the proviso which immediately follows the sub-section, and the sub-section when so read means that if for any good reason it is not possible for the employer to give the notice not less than one month before the cessation of employment, *e.g.*, because the employee gives less than one month's notice of resignation, the employer is all the same required to give the notice though less than one month from the cessation;

(2) in his Grounds of Decision the President of the Sessions Court did not state whether he took into consideration Exhibits MA-1, MA-2 and MA-3, or what influence he drew from them. Certain issues (as outlined in detail in the judgment) have to be tried and therefore the summary judgment should be set aside and this case be sent back to the Sessions Court for trial of the issues;

(3) in an action brought against an employer to recover tax of his employee where the employer has failed to comply with section 83(3) in respect of that employee, it must be pleaded and shown that the tax cannot be recovered from the employee by reason of that failure. In the present case there was no allegation in the Statement of Claim that S.'s tax could not be recovered from him by reason of the appellant's failure to comply with section 83(3);

(4) costs should be given to the appellant in any event.

CIVIL APPEAL.

A. Kanesalingam for the appellant/defendant.
Suriyadi bin Halim Omar (Senior Federal Counsel) for the respondent/plaintiff.

Cur. Adv. Vult.

Wan Hamzah J.: The defendant in the Kuala Lumpur Sessions Court Civil Action No. 940/1981 (appellant in this appeal) employed one S. Income tax amounting to $12,101.85 was due from and payable by S. He ceased employment with the defendant on December 7, 1975. The plaintiff (respondent in this appeal) alleged that the defendant had failed to give a written notice to the Director General of Inland Revenue that it was about to cease to employ S., as required by section 83(3) of the Income Tax Act. The plaintiff contended that by reason of the failure of the defendant